UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 14

MASON CONTRACTORS ASSOCIATION

OF ST. LOUIS

and Case 14-RC-12596

BRICKLAYERS' LOCAL NO. 1

OF MISSOURI

Petitioner

REGIONAL DIRECTOR'S DECISION AND ORDER

The Mason Contractors Association of St. Louis, here called the Association, is a multiemployer association of approximately 65 masonry employers[1] who have authorized the Association to negotiate and sign collective-bargaining agreements governed by Section 8(f) of the Act on their behalf with the Petitioner. The Association has bargained on this basis with the Petitioner for more than 30 years, and the parties' most recent 8(f) collective-bargaining agreement expires on May 31, 2006. The Petitioner filed a petition under Section 9(c) of the National Labor Relations Act seeking to represent employees employed by the 65 employers[2] in the unit described in the current collective-bargaining agreement between the Association and the Petitioner.[3] A hearing officer of the National Labor Relations Board held a hearing[4] and the parties filed briefs with me, which I have carefully considered.

[1] The employers are commercial and residential masonry contractors from the City of St. Louis and 12 Missouri counties whose services include commercial and residential bricklaying, blocklaying, tuckpointing, caulking, cleaning, and refractory work.

[2] The exact number of employers and employees in the requested unit is unclear. Though the Association's list identifies 65 signatory employers to the current contract, it appears some of these employers are no longer in business. Also, the petition identifies 650 employees in the requested unit, but other evidence indicates as many as 741 employees are employed by the employers.

[3] The contractual unit includes "bricklayers, stonemasons, blocklayers, pointers, cleaners and caulkers and their apprentices and masonry superintendents and foreman" employed by the employers. The present dispute involves the scope of the unit, not its composition.

The parties disagree as to whether the multiemployer unit sought by the Petitioner is appropriate. I have considered the evidence and arguments presented by the parties on this issue. As discussed below, I have concluded that a single-employer unit is normally appropriate in the construction industry; the Petitioner has failed to introduce evidence that a multiemployer unit satisfies the traditional community-of- interest test; and it is not appropriate to direct an election in any single-employer unit.

I. ANAYLSIS

Through a petition naming the Association, the Petitioner seeks to convert its Section 8(f) relationship with the employers into one governed by Section 9(a). Accordingly, the Board's decision in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. 843 F.2d 770 (3d Cir. 1988), provides the appropriate analytical framework. In *Deklewa*, the Board addressed 8(f) bargaining relationships and announced new rules designed to protect the free choice of employees. The Board abandoned the conversion doctrine whereby an 8(f) relationship converted into a 9(a) relationship by means other than a Board election or voluntary recognition, thereby requiring "the party asserting the existence of a 9(a) relationship to prove it."[5] Id. at 1385, fn. 41. Also, when a single employer joins a multiemployer association for the purposes of collective bargaining, the Board said that it would no longer automatically merge the single employer's employees into the multiemployer unit. Instead, with respect to unit determinations issues, the Board held that "the appropriate unit normally will be the single employer's employees covered by the agreement." Id. at 1377. The Board explained that these principles protected employees whose representational desires were irrelevant under the prior doctrine: "[w]e hold that the employees of a single employer cannot be precluded from expressing their representational desires simply because their employer has joined a multiemployer association." Id. at 1385, fn. 42.

[4] When the hearing in this matter initially opened on March 7, 2006, the employers had not been notified and therefore did not appear. The hearing was postponed in order to provide the employers with notice and an opportunity to participate in the proceedings. None of the employers appeared when the hearing resumed.

[5] Thus, even though an employer authorizes a multiemployer association to act as its collective-bargaining representative, a union cannot claim conversion of the 8(f) relationship to full 9(a) status unless it can prove that it achieved such status among its employees on a single-employer basis. Such showing is accomplished only by traditional means, i.e., Board election or voluntary recognition based on a prior demand for recognition supported by a showing of majority employee support. Here, the Petitioner has not been granted voluntary recognition from the Association or any of the individual employers.

With *Deklewa's* principles in mind, I will now consider whether the Petitioner's requested unit is appropriate under the familiar community-of-interest analysis. *Barron Heating & Air Conditioning, Inc.*, 343 NLRB No. 58, slip op. at 5 (2004), citing *Johnson Controls, Inc.*, 322 NLRB 669, 670 (1996), *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). This inquiry evaluates whether the employees in the petitioned-for unit share a sufficient community of interest in view of their duties, functions, interchange, transfers, supervision, geographic proximity, bargaining history, and other terms and conditions of employment. Applying these factors, there is no basis for departing from *Deklewa's* rule that a single-employer unit is normally appropriate. The record establishes that the 65 employers are separate, independent, unrelated, and geographically diverse entities whose employees do not interact with each other in any work-related capacity. There is no significant evidence of common supervision, temporary or permanent transfers, or interchange. While 13 out of 741 employees worked for more than one employer during September 2005, this limited evidence involves only a small number of employees and employers and does not establish a community of interest among the employees of all 65 employers. Moreover, even assuming employees regularly worked for multiple employers or multiple employers regularly worked on the same project, this is not compelling evidence of a community of interest where there is not any common supervision, functional integration, or work-related interaction.

Although employees possess similar skills, enjoy the same contractual benefits, and are subject to the same working rules, these factors are not compelling enough to override *Deklewa's* concerns regarding the free choice of employees of a single employer. *Carthage Sheet Metal Company Inc.*, 286 NLRB 1249

fn.1 (1987) (multiemployer unit is contrary to the normally appropriate single-employer unit and union failed to satisfy community-of-interest factors); see also *Comtel Systems Technology*, 305 NLRB 287, 291 (1991) (single-employer unit appropriate in multiemployer setting absent evidence of contemporaneous majority support). Though the Petitioner emphasizes the parties' bargaining history, that factor is not conclusive as to the determination of the appropriate unit.[6] See *Alley Drywall, Inc*., 333 NLRB 1005, 1007 (2001) (bargaining history pursuant to 8(f) agreements is not the conclusive consideration in determining whether a petitioned-for unit is appropriate). In sum, the Petitioner has failed to establish that its requested multiemployer unit is appropriate.

Having determined that the requested unit is not appropriate, I will dismiss the petition rather than direct elections in separate single-employer units even though the Petitioner indicated that it would proceed to an election in any unit found appropriate. The petition naming the Association is not the proper vehicle to direct elections involving employers who were not named in the petition and did not otherwise participatein the hearing. Also, the record does not contain commerce information for 62 of the employers and therefore provides no basis for asserting jurisdiction over them on an individual basis. If the Petitioner desires to represent the employees of a particular employer, it may file a petition naming that employer. Proceeding in this fashion alleviates due process concerns, eliminates unnecessary proceedings against employers that are no longer in business, and ensures that the employers meet the Board's jurisdictional standards.

[6] The Petitioner cites cases addressing the appropriateness of a multiemployer unit in the context of 9(a) bargaining relationships. Here, the Petitioner is the 8(f) representative and these cases do not apply.

II. CONCLUSIONS AND FINDINGS

Based on the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. The Association is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner's requested multiemployer unit does not constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. It is not appropriate to direct an election in any single-employer unit on the basis of this petition.

III. ORDER

The petition filed in this matter is dismissed.

IV. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570-0001. This request must be received by the Board in Washington by **April 21, 2006**. The request may not be filed by facsimile.

Dated: April 7, 2006 /s/ [Ralph R. Treman]

at: Saint Louis, Missouri Ralph R. Tremain, Regional Director

National Labor Relations Board, Region 14